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OFFICE OF PETITIONS

In re Application of :
James D. Mitchell, Jr. :
Application No. 09/825,176 :
Filed: April 3, 2001 : DECISION ON PETITION
Attorney Docket No. 029079.0001 :

This is a decision on the petition under 37 CFR 1.181 to withdraw the holding of abandonment, filed October 27, 2005.

The petition under 37 CFR 1.181(a) is **DISMISSED**.

The above-cited application was filed on April 3, 2001. A final Office action was mailed in the application on November 14, 2002, allowing a three-month statutory period for reply. A filing was made on May 14, 2003, which was alleged to contain a Notice of Appeal in response to the final Office action. A review of the application file does not reveal the actual Notice of Appeal filed on May 14, 2003, although copies of the Notice of Appeal received on later dates are noted. Having noted no proper response to the final Office action, the application became abandoned on February 15, 2003. A Notice of Abandonment was mailed on December 12, 2003.

A petition to withdraw the holding of abandonment was first filed on August 18, 2005, wherein petitioner argued that a timely response in the form of a Notice of Appeal was made on May 14, 2003, accompanied by a request for an extension of time within the third month. The petition was dismissed by a decision mailed on October 4, 2005. The petition was dismissed because a statement did not accompany it from the person who signed the certificate of transmission pursuant to 37 CFR 1.8. The instant renewed petition was filed on October 27, 2005, wherein petitioner argues that the person who signed the certificate of transmission is no longer employed by petitioner, but that Ms. Kimberly Chasteen, who signed the petition, has personal knowledge that the Notice of Appeal was transmitted on May 14, 2003. The undersigned has found persuasive petitioner's arguments on the merits of the petition; however, the petition is being dismissed because it is untimely. Further to this point, section 711.03(C) of the *Manual of Patent Examining Procedure* (MPEP), provides, in pertinent part, that:

37 CFR 1.181(f) provides that, *inter alia*, except as otherwise provided, any petition not filed within 2 months from the action complained of may be dismissed as untimely. Therefore, any

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petition (under 37 CFR 1.181) to withdraw the holding of abandonment not filed within 2 months of the mail date of a notice of abandonment (the action complained of) may be dismissed as untimely. 37 CFR 1.181(f).

Rather than dismiss an untimely petition to withdraw the holding of abandonment under 37 CFR 1.181(f), the Office may require a terminal disclaimer as a condition of granting an untimely petition to withdraw the holding of abandonment.

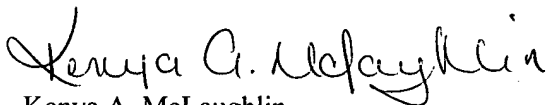
Although a Notice of Abandonment was mailed December 12, 2003, the first petition under 37 CFR 1.181 was not filed until August of 2005. The petition to withdraw the holding of abandonment is, therefore, untimely. Petitioner may file a second renewed petition along with a terminal disclaimer, which is enclosed for petitioner's convenience.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
United States Patent and Trademark Office
Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
Attn: Office of Petitions

Questions concerning this decision may be directed to the undersigned at (571)272-3222.



Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Form PTO/SB/63—"Terminal Disclaimer to Accompany Petition"